

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIZABETH NABATANZI,	:	
Petitioner,	:	
	:	
v.	:	3:02CV1452(AHN)
	:	
UNITED STATES IMMIGRATION	:	
& NATURALIZATION SERVICE, ET AL.	:	
Respondents.	:	

MEMORANDUM AND ORDER

The court has thoroughly reviewed and considered the petition for a writ of habeas corpus filed by petitioner Elizabeth Nabatanzi ("Nabatanzi") and the government's opposition to the habeas petition and motion to dismiss. Because the claims that Nabatanzi raises were or could have been litigated in her prior habeas petition before the District Court for the District of Massachusetts, she is precluded by statute and by the doctrine of res judicata from raising them in this action. Accordingly, Nabatanzi's petition for a writ of habeas corpus is DENIED.

In the instant petition, Nabatanzi seeks review of the July 5, 2000, decision of the Board of Immigration Appeals ("BIA") which affirmed a September 10, 1999, decision of the Immigration Judge that ordered her deported. (See Gov.t Mem. in Opp'n at Ex. A.). Nabatanzi sought and obtained review of that decision in the District Court for the District of Massachusetts, which issued a Memorandum

and Order denying Nabatanzi's habeas corpus petition on September 6, 2002. (See Gov't Mem. in Opp'n at Ex. C (copy of decision)). Accordingly, under 8 U.S.C. § 1105(a)(c) (1994), Nabatanzi is estopped from relitigating the issue of her removal in a habeas petition before this court.

The rules in effect at the time of Nabatanzi's deportation hearing, expressly recognized estoppel when the grounds for petition were or could have been presented in the prior proceeding:

No petition for review or for habeas corpus shall be entertained if the validity of the order has been previously determined in any civil or criminal proceeding, unless the petition presents grounds which the court finds could not have been presented in such prior proceeding, or the court finds that the remedy provided by such prior proceeding was inadequate or ineffective to test the validity of the order.

8 U.S.C. § 1105(a)(c); see also 8 U.S.C. § 1252(b) (1996) (similar provision, applicable to judicial review of final orders of removal issued against aliens placed in proceedings after April 1, 1997). Because the United States District Court for the District of Massachusetts reached the validity of the BIA's decision, this Court is barred from reviewing petitioner's habeas petition.

In addition, the doctrine of res judicata prevents this court from reaching the merits of Nabatanzi's claims. "'Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or

their privies based on the same cause of action.'" Semtek Int'l Inc. v. Lockheed Martin Corp., 531 U.S. 497, 502 (2001)(quoting Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 n. 5 (1979)); see also Angel v. Bullington, 330 U.S. 183, 192-193 (1947) ("The doctrine of res judicata reflects the refusal of law to tolerate needless litigation. Litigation is needless if, by fair process, a controversy has once gone through the courts to conclusion. . . And it has gone through, if issues that were or could have been dealt with in an earlier litigation are raised anew between the same parties.").

This doctrine applies with full force in the immigration context. See Hibbert v. INS, 554 F.2d 17, 20 (2d Cir.1977) (recognizing that res judicata is applicable to deportation order); Spinella v. Esperdy, 188 F. Supp. 535, 542 (S.D.N.Y.1960) (alien "has had his day in court. Surely, he cannot expect, nor is he entitled to, an interminable relitigation of the same basic issues").

As noted above, Nabatanzi had the opportunity to present all of her challenges to the BIA's decision in her prior habeas petition filed in the United States District Court for the District of Massachusetts. Having been denied relief by that court, Nabatanzi cannot now come before this court to

reelignite the validity of the BIA's decision.

Accordingly, the petition for a writ of habeas corpus [doc. #1] is DENIED.¹ The Government's motion to dismiss [doc. #14] is GRANTED, and the Clerk is directed to CLOSE this case.

SO ORDERED this day of November, 2002 at
Bridgeport, Connecticut.

Alan H. Nevas
United States District Judge

¹ Nabatanzi also filed several motions. Her motion to proceed in forma pauperis [doc. # 3] and motion to amend her habeas petition [doc. # 11, 16] are GRANTED. The remaining motions, including the motion to stay her deportation [doc. # 2], for appointment of counsel [doc. #3], to expedite [doc. #5], for a trial [doc. #6, 7], for a speedy trial [doc. #8, 9], ex-parte motion to modify the order to show cause [doc. #10] are DENIED for the reasons stated in this Memorandum and Order.